# A Lawyer's View on the Problems of Wage Stabilization

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I should like first to review very quickly what has been done so far by the Wage Stabilization Board. They have issued six general orders, five of which are in effect. The first one merely defines what constitutes an increase that needs approval. The second one is the so-called John L. Lewis order, which approved agreements made on or before the 25th of January of this year which were to go into effect before February 9. That one is pretty much water over the dam by this time — not of any great pertinence at the moment. They have issued one important interpretation, to the effect that the agreement need not have been actually signed by the 25th so long as it was agreed to between the parties and was to go into effect before February 9. General Regulation Number 3 merely approved in advance any increases necessary to comply with the wage-hour law or similar state laws. General Regulation Number 4, carried over from the War Labor Board, delegated to state and municipal bodies the authority to set rates for their own employees subject to possible review by the Wage Stabilization Board later. General Regulation Number 5, by far the most important of those which are now in effect, dealt with the fascinating subject of merit and length of service increases, promotions, reclassifications and that sort of day-to-day wage administration problems that all companies have. I will not go into the details of it at this point. In general, it provides that past practices may be followed with certain limitations as to the amount. Generally speaking, unless you have some specific plan of increases in specified amounts or periods of time, you are limited to the average amount of merit increase which you gave for that classification the year before. General Order Number 6 is, of course, the big show right now. The Board issued this recommendation for a catch-up policy permitting up to ten percentum increases over the level prevailing on January 15, 1950 for those employees who have not yet had their ten percentum increase. Labor members promptly picked up their papers and walked out and that recommendation is now on Mr. Eric Johnston's desk and does not become effective until he approves it. He has been meeting with labor representatives and members of the Board and what is coming out, of course, I do not know, but presumably some new formu-

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la. I would guess it would be something supplemental to this ten percentum formula rather than something reversing it. I should think that the most obvious way of getting around this immediate crisis would be to base it on the cost of living index. As you recall, General Order Number 6 said on its face that it was recognized that the cost of living may go up further and that the Board would review this whole question before July 1st. Now they could, in all good conscience, start reviewing it right now if they wanted to.

The last Bureau of Labor Statistics index that has been published is as of December 15, 1950. The January 15 figures are not out yet and so you have five months' figures that will be out before July 1st. At the rate things are going I suppose it is not unduly hazardous to guess that there will be at least a five percent increase in the cost of living index by the time next June rolls around. I would certainly agree with what Mr. Daugherty said, that, as a practical matter, you cannot very well deny the cost of living adjustments as long as food prices are uncontrolled, and if you do control them you probably will not have any problem with the escalators anyway. So, I would not be too surprised to see some escalator provision emerge out of this hurly-burly in Washington right now, on top of the ten percentum. I think that would be a reasonably sensible solution.

Let me now say a few words on immediate problems that I think tie in closely with the problem of what standards or what policy you will have on wages. One of these problems, and it seems to me to be a very serious one, is this device that has been incorporated into General Order Number 6 of having a self-administered wage policy. During World War II all applications for increases within the Board's policies except for individual adjustments within ranges, had to be submitted for approval. General Order Number 6 handles this in another way. It says that if you are within the ten percentum under this formula you can go ahead and put it into effect. You do not have to get approval first. All you have to do is file, within ten days afterward, a statement with the Wage-Hour office as to how you figured it. I can see some pretty horrible fiascos coming out of that approach, particularly if that is extended to other phases of the policy. For example, suppose they come out with a policy based on sub-standards as they did the last time. Suppose they take the current minimum wage-hour of 75 cents and say you can go up to that without approval and make whatever necessary adjustments above the 75 cents level that are necessary to maintain normal relationships between jobs. This is something like what the War Labor Board did the last time. Then assume they add that you can go ahead

and administer that yourself. That would be another field for fiascos — what used to be called intra-plant inequities.

Finally, there is the bracket system. I assume they will have to have something like that this time. It would be absolutely impossible to have such a system self-administering. Even under the present catch-up formula. There are all sorts of other questions that would also come up. For instance, what is the unit to which you apply the ten percentum? Obviously you cannot have any automatic policy that will answer all your questions. Should you take the whole industry, or all the plants of your company, or plant by plant? Should the office force be separate? These questions become extremely involved when you get down into the matter of individual adjustments for small unorganized groups of workers. If the Board says to employers, "Go ahead and figure it out and put it into effect and then tell us what you have done," I am sure there are going to be vast numbers of misapprehensions of what the Board intended. I know what we got last time under the "Little Steel Formula." A great many people had difficulty in figuring out how the rule was to be applied. So did the Board, for that matter. Those difficulties will continue if they try to issue self-administering general orders on other subjects.

Now, on the other hand, I realize that there is something to be said for the device. I know that the fellows down in Washington, most of whom are veterans of the last time around, are extremely anxious to avoid the terrible backlogs that the War Labor Board started out with last time. The freeze came then in October of 1942 and it was not until well into the summer of 1943 that the Board began to emerge from under the pile of cases. This self-administering technique does have the advantage of avoiding the big backlog of applications and it may be justified on that ground. Even if you do have it a little sloppy for a while, you at least will not have a lot of cases piled up.

I am, therefore, raising the question of whether they should not abandon that approach as soon as they possibly can; that is, as soon as they are staffed enough to handle the cases on application. This brings us to an underlying question which I think is really at the heart of this whole matter. That is the question, which I understand is the subject of some controversy now, of tripartite administration of a policy as against a staff, or "all public", administration. One of the purposes, or at least the effect, of this self-administering order is to remove the tripartite board from the actual process of deciding individual cases. There are some advantages to that. It seems to me it is terribly important for the Board to set the policy, to handle the really tough individual cases, and to give constant guidance, case by case, to the staff.

During the last war the regional boards finally got around to delegating authority to the staff to administer policies. In consequence, about 96% of all cases were decided by the staff rather than the regional board itself. That was essential; in fact, it could hardly have worked at all any other way. But it seems to me foolish to assume that you can just frame a general regulation, issue your policy, and then wash your hands of it and let either the staff, or the customers themselves go ahead and administer it without the Board keeping supervisory functions over the cases.

I do not know how serious some of the thinking is that I have heard, about having an all public board and not having a tripartite set-up at all. I think it would be a terrible mistake to do that. We are going to have a lot of trouble, I think, getting voluntary compliance with this program in the present half-way sort of mobilization effort. It seems to me that we are just asking too much to think that we could get any kind of cooperation at all unless we have industry and labor actively participating in the formulation of the policy. Furthermore, there are a couple of advantages to a tripartite system that may not be readily apparent to someone who has not lived through it. One of them is that it insulates the staff people from a lot of pressure which could become unbearably severe if the staff did not have the Board to fall back on. They have difficult policy questions to face and tough individual cases where the customers are generating a lot of heat, and it is very comforting to report to the Board and let the tripartite board handle it and get the staff member off the spot. This is a tremendous advantage. One other advantage is that in the recruiting of personnel, a tripartite board is an almost perfect device for thwarting any efforts of politicians to get incompetent wheel horses into the organization. There are very few politicians who want to buck industry and labor in trying to introduce some unqualified applicant for a job. I think the tripartite board has a very real value in insuring a competent staff.

Let me now turn to the question of whether the present board should handle disputes. My personal opinion is that the whole shooting match down in Washington now is not so much over the wage policy, over whether it should be ten or twelve percentum, as it is over the handling of dispute cases. I understand that at least some segments of industry feel rather strongly that the Board should not handle such cases. They feel either that there should be no arbitration machinery at all set up for disputes in this situation or that if there is a dispute board it should be kept separate from the board that is handling wage stabilization.

It is my opinion that, as a practical matter, you have got to have dispute machinery and it has got to be in the same board

that is handling the wage stabilization program. I doubt very much if any workable system could be devised to have it in a separate board. Stop and think, for a minute, what you would have there. You would have a critical dispute, for presumably they will not handle any disputes that are not critical to the defense effort, and in a critical dispute it is important to have a decision that will avoid any stoppage of work. But the issue you take to a dispute board will, nine times out of ten, be a wage issue involving, directly or indirectly, a question of interpreting the wage policy. If a separate dispute board makes a decision, it would have to go over to the wage stabilization board for approval or disapproval. The board that is handling the dispute, in other words, would not have authority to make a decision on it; its decision would be subject to approval of the other board. So, on these practical grounds, I would assume that both jurisdictions would have to be in the same board. I am equally opposed to the possibility of not having any disputes machinery at all. What this really means is that we can afford strikes as usual; that during this period we do not need any machinery for avoiding them. We have already had a lot of important disputes over the wage policy and I think it is very foolish to say "go ahead and strike and we will try to mediate, but we are not going to give anybody the power to make a final decision". I think that the Wage Stabilization Board should at least hold a hearing and make a recommendation of a solution that they believe would be consistent with the policy.

Assuming that the Board gets dispute jurisdiction, we shall have some interesting questions of whether we should have tripartite panels to hear the cases or single staff hearing officers. That may seem a small detail but I understand there is a good deal of feeling about it and the reports from the regional chairmen the last time indicated, almost without exception, that the individual staff hearing officers turned in better, clearer reports, more consistent with board policies, because, as full time employees, they were more familiar with them. Moreover, they turned them in a good deal faster than do the ad hoc tripartite panels. On the other hand, if you have a single staff person hearing a dispute you lose all the advantages of a tripartite panel. Parties presumably have more confidence in a tripartite panel, for they have a feeling that they are represented and that there is no bureaucrat stuffing something down their throats. I have no conclusion to draw on this matter except that, obviously, I think there should be a good deal of flexibility in using either a panel or a hearing officer depending on the nature of the case. I think it would be a mistake to lay down any flat rule that we are not going to have any more individual hearing officers.

I now want to mention two or three other policy questions, on the assumption that the Board will be handling disputes. First, there is the practical matter of how to avoid getting involved in a vast multitude of cases as they did the last time. Such a backlog would have the effect, of course, of weakening both collective bargaining and mediation. I think everyone in the program was concerned about that last time, but, nevertheless, everybody got into the habit of dumping their cases into the War Labor Board. Defense cases, non-defense cases, hotels, restaurants, laundries, everything came piling into the War Labor Board. I know that the people now in Washington are anxious to avoid that but there are going to be some difficult decisions as to where to draw the line. This is especially true, I think, in cases where both the company and the union agree to submit their case to the Board. Suppose they come in with an agreement and say, "We have nothing in particular to do with the defense effort but we agree to submit our case to you for decision as to what is coming under the wage policy." It might be a little difficult for the Board to resist taking a case like that, but I suspect it would. Another question involves the really critical cases that would come under the heading of national emergency. If we assume that there is no agreement between the company and the union to submit these cases for decision of the Board, how should they be handled? I think that is the toughest question of all. What is a defense case? We do not have a no-strike pledge this time, and presumably, in the absence of the total war effort, we are not going to get a no-strike pledge.

Nobody has yet asked for disputes jurisdiction but we shall have to do something with critical cases. The Taft-Hartley Act, in one of its rather unfortunate provisions, provides that in cases involving the national health and safety, the President may set up a board of inquiry but the board shall not make any recommendations. I think that is a pretty ridiculous limitation and I am wondering if that may create any problems here. It would be natural to suggest that, in a critical case, the Wage Stabilization Board should be designated by the President as the board to hold the hearing and make recommendations, but would that run afoul of that provision in the Taft-Hartley Act? I would hope there is some way of getting around that. Of course you can always issue findings of fact in such a way as to indicate clearly how you think the dispute ought to be settled, but that is a clumsy way of going about it. Finally, can the disputes board avoid getting tangled in some new issues that promise to be very involved? I am thinking now of pension and welfare issues. You will recall that, during World War II, the War Labor Board did not, as a policy, order either pension or welfare plans, in dispute cases, although it generally approved

them in voluntary cases. However, at that time these issues were not very prevalent. The situation today, of course, is quite different. These plans now represent a growing trend and I think that the industry side is considerably worried, and probably with good cause, as to whether the government is going to start ordering, in disputes cases, all of the intricate details of a welfare and pension plan. There is a real danger, it seems to me, that the Board will become hopelessly involved in the very intricate, technical issues on those subjects.

In concluding these remarks I should like to take the opportunity of saying something that has been on my mind for some time about personnel in government agencies and in the stabilization boards in particular. I think there is more danger that the boards will get bogged down in administrative fiasco than in any matters of policy formation. Their biggest job, I think, is going to be finding competent personnel. Today we do not have the same patriotic urge that we had after Pearl Harbor, but it seems to me that the country is fortunate indeed, in having, in this situation, a reservoir of experienced and capable people in the universities. That is the most hopeful source of high-grade personnel. I know it is popular to poke fun at the long-haired professors sitting in their ivory towers, who never met a payroll but I have seen a lot of them who worked hard during World War II. As a matter of fact, I do not know where the War Labor Board would have been the last time without the professors. It seems to me that the country would really be in very bad shape in a situation like this if it were not for the hundreds of fine public servants who come forward from the classrooms to step into places of high responsibility. They did this with great distinction the last time and I feel confident that they will do so again.